

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUTHER PETERSON, JR.,

No. C 11-2375 SI (pr)

Petitioner,

**ORDER DISMISSING
UNEXHAUSTED CLAIMS AND
SETTING BRIEFING SCHEDULE**

v.

GARY SWARTHOUT, warden,

Respondent.

Luther Peterson, Jr., filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court granted respondent's motion to dismiss on the ground that state court remedies had not been exhausted for three of the claims, and ordered petitioner to choose how to deal with the unexhausted claims.


Petitioner then filed a motion to dismiss the unexhausted claims. Upon due consideration, petitioner's motion to dismiss the unexhausted claims is GRANTED. (Docket # 15.) Claims 1, 2, and 5 are now dismissed and require no further response or consideration.

With the dismissal of those claims, there remain for adjudication the following two claims: Claim 3 - the jury instructions deprived petitioner of his due process right to a unanimous jury because they did not require unanimity on every element of the crime(s); and Claim 4 - the supplemental jury instruction on the elements of California Penal Code § 269 denied him due process.

1 In order to move this action toward resolution, the court now sets the following briefing
2 schedule on the two claims remaining for adjudication: Respondent must file and serve his
3 response to the petition no later than **September 28, 2012**. Petitioner must file and serve his
4 traverse no later than **November 2, 2012**.

5 IT IS SO ORDERED.

6 DATED: July 23, 2012



SUSAN ILLSTON
United States District Judge